

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

10/24/2002

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2002-010400

FILED: \_\_\_\_\_

WHITEHOUSE INTERIOR & FLOWERS

AUDREY P COHEN

v.

ROBERT DEVERS

DENNIS A SEVER

REMAND DESK CV-CCC  
SCOTTSDALE JUSTICE COURT

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

The first issue to be addressed is whether Appellee's claim for payment is barred by the doctrine of accord and satisfaction. Appellee correctly argues that when reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.<sup>1</sup>

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<sup>1</sup> *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

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All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.<sup>2</sup> If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.<sup>3</sup> An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.<sup>4</sup> When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.<sup>5</sup> The Arizona Supreme Court has explained in State v. Tison<sup>6</sup> that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.<sup>7</sup>

After a careful examination of the record, I find that substantial evidence does not exist to support the action of the lower court. Although this court is extremely reluctant to disturb the lower court's factual findings, I will not hesitate to correct clear legal error.

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<sup>2</sup> Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

<sup>3</sup> Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

<sup>4</sup> In re: Estate of Shumway, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

<sup>5</sup> Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

<sup>6</sup> SUPRA.

<sup>7</sup> Id. at 553, 633 P.2d at 362.

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Generally, the elements essential for valid contracts must be present in a contract of accord and satisfaction.<sup>8</sup> Those elements are as follows: (1) A proper subject matter, (2) competent parties, (3) an assent or meeting of the minds of the parties, and (4) a consideration.<sup>9</sup> The essential element of accord and satisfaction is an assent or meeting of the minds of the parties, which can be inferred from acceptance and cashing of a check.<sup>10</sup>

As stated in Mobilife Corp. v. Delta Inv. Corp.<sup>11</sup>:

[t]he general rule is that the acceptance and use of a remittance by check which purports to be a payment 'in full,' or which implies words of similar meaning, or is accompanied by a letter to that effect, constitute an accord and satisfaction of the larger claim of the creditor, assuming the claim is unliquidated or disputed.<sup>12</sup>

In Frank Culver Elec., Inc. v. Jorgenson,<sup>13</sup> a general contractor offered a check in payment of a subcontractor's disputed claim, and the amount was less than that requested. The words "Final invoice" were written on front of the check. The general contractor indicated it would pay only the amount of the check and not a penny more. When the subcontractor accepted the check and cashed it, accord and satisfaction occurred.

The facts in Frank Culver Elec., Inc. are almost an identical to the case at hand. Appellant wrote a check that stated, "Endorsement as payment in full and complete satisfaction of all claims," and included a letter stating that

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<sup>8</sup> Tucson Utility Supplies, Inc. v. Fred J. Gallagher Const. Co., 102 Ariz. 499, 433 P.2d 629 (1967).

<sup>9</sup> Green v. Huber, 66 Ariz. 116, 119, 184 P.2d 662, 664 (1947).

<sup>10</sup> Milberger v. Chaney Bldg. Co., Inc., 146 Ariz. 181, 183, 704 P.2d 822, 824 (App. 1985).

<sup>11</sup> 121 Ariz. 586, 592 P.2d 782 (App.1979).

<sup>12</sup> *Id.* at 589, 592 P.2d at 785.

<sup>13</sup> 136 Ariz. 76, 664 P.2d 226 (App. 1983).

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Appellant would "not pay a single penny more." Appellant enclosed this check along with a letter instructing Appellee to come pick up the merchandise immediately "[I]f this [was] not agreeable." The only element at issue in this case is whether there was an assent or meeting of the minds. Appellee's assent may be inferred from its acceptance and cashing of the check.<sup>14</sup> After a careful review of the record, this court determines that Appellee's claim is indeed barred by the doctrine of accord and satisfaction.

Consequently, the lower court erred in granting judgment to Appellee, as a matter of law, and awarding attorney's fees.

IT IS THEREFORE ORDERED reversing and vacating the judgment of the Scottsdale Justice Court in this case.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale Justice Court, with instructions to enter judgment for Appellant/Defendant Devers, for all further, if any, and future proceedings, except the issue of attorney's fees and costs.

IT IS FURTHER ORDERED that counsel for Appellant submit an application and Affidavit for attorney's fees and costs, with a form of order by November 30, 2002.

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<sup>14</sup> *Frank Culver Elec, Inc. V. Jorgenson*, supra.